IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1334 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

T P SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1334 of 1987

MR PARESH UPADHYAY for Petitioner No. 1-2

MR MA BUKHARI, AGP for Respondent No. 1-2

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 28/03/2003

ORAL JUDGEMENT

The petitioners, in this petition, have prayed for mandatory directions to the respondents to treat the petitioners as appointed in the equivalent cadre of Head Clerks carrying the pay scale of Rs.425-800, from the date of appointment as Stastical Assistant and grant all consequential benefits of assigning seniority in the cadre of Head Clerks from the date of their appointment as Statistical Assistants and promotion to the post

carrying pay scale of Rs.500-900. The petitioners have alternatively prayed for the directions to the respondents to assign seniority to the petitioners in the cadre of Senior Clerks from the date of their initial appointments and to treat the petitioners on the higher post carrying the pay scale of Rs.425-800, on the basis of said seniority and on the basis of the date of promotion of the juniors to the petitioners appointed in the equivalent cadre in the office of the respondent No.2 and to grant all consequential benefits of fixation of pay, arrears of salary, deemed date of promotion in the cadre of Rs.425-800 etc.

2) The brief facts giving rise to the present petition are that the petitioners were appointed on 24th August, 1979, on the post of Statistical Assistants, created by the department in the pay scale of Rs.380-600 and they were continuously working as such, till they were promoted as Social Welfare Inspectors in the pay scale of Rs.425-800 on 8th December, 1986. The main grievance ventilated by the petitioners was that their names were not included in the seniority list in all these years and they were not given same benefits of promotion and higher scale, as were available to the similarly situated Statistical Assistants in the office of the Director of Bureau of Economics and Statistics and also to the persons appointed simultaneously with the petitioners but in the lower cadre, who were promoted from the cadre of Investigator drawing pay scale of Rs.260-400 to the post of Senior Clerk drawing pay scale of Rs.330-560. The petitioners were, therefore, denied the equal opportunity in the course of public employment, violating constitutional guarantee contained in Articles 14 and 16 of the Constitution of India. It was further submitted that because of the indifferent attitude of the respondents, the petitioners have suffered recurring loss right from the date of their appointment in the year 1979. The petitioners further submitted that with a view to get the avenue of promotion, they started making representations to include their names in the combined seniority list of Statistical Assistants maintained by the Bureau and/or to include their names in the equivalent post in the office of the respondent No.2. Similarly, representations were also made by the investigators, who were simultaneously appointed with the petitioners. A communication was sent to the petitioners on 30th April, 1981 stating that necessary proposal was made to the State Government to include their names in the cadre of Gujarat Statistical Service and on receiving the decision of the State Government necessary orders would be passed. However, the matter was not pursued and

the respondent No.1 did not resolve the controversy for unduly long time till November 1986. The petitioners accordingly continued to serve in the isolated cadre of Statistical Assistants carrying the pay scale of Rs.380-600 in the office of the second respondent, without any benefit of promotion. The petitioners, thereafter, made a further representation on 30th July, 1985 and in pursuance of the said representation, the petitioners were informed by letters in July, 1986 and October 1986 that the proposal dated 20th July, 1981 to assign them appropriate seniority and consequent promotion was pending with the State Government and the correspondence in this behalf was going on and as soon as the orders were issued they would be informed accordingly. The petitioners further submitted that the recruitment rules for the posts of Head Clerks, Social Welfare Inspectors, etc., came to be enacted by notification dated 6th November, 1986, wherein it was provided that the appointment to the post of Head Clerk and its equivalent post like Social Welfare Inspector shall be made by promotion of persons of proved merit and efficiency from amongst the persons working in the cadre of Statistical Assistant, Senior Clerks, etc. and on that basis of the said rule, the petitioners came to be promoted provisionally by order dated 8th December, 1986, as Social Welfare Inspectors carrying the pay scale of Rs.425-800. This order was passed by the Director Social Welfare Department, Gujarat State, Ahmedabad on 8-12-1986. However, the issue of assigning seniority to the petitioners in the equivalent cadre of Senior Clerks and/or Head Clerk from the date of their appointment had remained unresolved and no orders were passed by the respondent No.2.

3) The petitioners further submitted that though the petitioners were promoted to the cadre of Social Welfare Inspectors carrying the pay scale of Rs.425-800 vide order dated 8-12-1986, the respondent No.1 did not give the seniority to the petitioners. On the contrary, the seniority list was issued on 13th February, 1987 showing the position of Head Clerks and/or the posts equivalent thereto as on 1st January, 1987, along with a circular stating that the persons like the petitioners, who were promoted pursuant to the recruitment rules dated 6th November, 1986 were assigned the seniority from the date of their appointments and the petitioners were shown at the bottom of the said list at Sr.Nos. 151 and 152. The persons recruited after the petitioners, either as Head Clerks or as Social Welfare Inspectors by way of direct recruitment were shown senior to the petitioners. It was, however, stated that the petitioners were regularly

appointed to the post of Statistical Assistants carrying the pay scale of Rs.380-560, which was retrospectively revised as recommended by the 2nd Pay Commission with effect from 1st January, 1973 to Rs.425-700, which was also prescribed for Head Clerks in the office of the respondent No.2. The petitioners were, therefore, required to be treated on the equivalent posts of Head Clerks and were entitled to reckon their seniority in that cadre and they are also entitled to promotion to the post carrying pay scale of Rs.500-900. Alternatively, it was submitted that they were to be treated as Senior Clerks carrying the pay scale of Rs.380-560. However, the said treatment was not given by the respondents. As a result of this, the petitioners did not get seniority in the equivalent cadre right from 1979 till 1986 and consequently did not get any service benefits like selection grade, promotion, etc. Number of juniors, who were only matriculates, who came to be recruited after the petitioners, were included in the list of promotion as Head Clerks and the petitioners were shown below them in the seniority list dated 13th February, 1987. The petitioners's services were not reckoned in any cadre during the period from 1979 to 1986. The petitioners, therefore, claimed the deemed date of promotion in the equivalent cadre of pay scale of Rs.425-700 after reckoning their seniority from the date of their appointment.

4) It was further submitted that the Statistical Assistants and Investigators were appointed simultaneously by the office of the first respondent and both were denied seniority in the equivalent cadres and combined proposal was made in the year 1981 by the office of the first respondent. The investigators were to be treated as equivalent to junior Clerk on the basis of their pay scale and before any orders were passed by respondent No.1, the investigators were so treated and were given promotion as Senior Clerks, even though there were no rules framed by the State Government. The said treatment was not offered to the petitioners, and they were refused promotion, when number of juniors were promoted from time to time and lastly on 30th July, 1986. The petitioners were promoted in the month of December 1986 and were assigned seniority from the date of their promotion, hence the investigators came to be promoted long before Rules of their cadre were framed, while the petitioners denied the said benefits and were offered discriminatory treatment. The petitioners, therefore, filed the present petition ventilating their grievance raised much earlier before the respondent-authorities.

5) This Court has issued the rule on 22-9-1988. An affidavit in reply was filed on behalf of the respondent No.2, wherein it was stated that there was no provision for the direct recruitment to the post of Statistical Assistant in the Social Welfare Directorate. However, due to the necessity in urgent administrative exigencies the petitioners were recruited by direct recruitment and were appointed as Statistical Assistants in the said office. It was further stated that at that time there was no provision for seniority in any common cadre like that of Senior Clerks and other cadres. It was further stated that the recruitment rules and the conditions of appointment for the post of Statistical Assistant did not contain any condition for promoting to higher cadre from Statistical Assistant cadre and that there was no avenue of promotion for the post of Statistical Assistants to the higher cadre. It was further stated that Rules regarding seniority, promotion etc. for Statistical Assistants working in the office of Director of Social Welfare and the Director of Bureau of Economics and Statistics are totally different. It was further submitted that the recruitment rules for the post of Head Clerk and equivalent posts in Class III cadre had been made by Government notification dated 6-11-1986 and as per the said Rules, the cadre of Statistical Assistant was made as common feeder cadre containing Senior Clerk, Junior Inspector, Junior Editor, Senior Clerk cum Accountant, Lady Social Welfare workers, and Lady Supervisor etc. for promotion to the post of Head Clerk and equivalent cadre. Pursuant to this notification, the promotions were given to the petitioners to the cadre of Social Welfare Inspectors, which was equivalent to Head Clerk vide office order dated 8-12-1986. It was further stated that the said recruitment rules have not come into force from a date earlier than its publication, and hence the question for giving deemed date to the petitioners did not arise as claimed by the petitioners. It was further stated that the temporary seniority list of Head Clerk and its equivalent posts, being position as on 1-1-1987 was published on 13-2-1987 and petitioners were placed in the said seniority list, according to the provision of the recruitment rules and their date of promotion to the post of Statistical Assistant. It was, therefore, contended that the prayer for the seniority from deemed date cannot be granted. It was also submitted that the implementation of the notification was only to be made from the date of its publication i.e. 6-11-1986 and cannot be operated retrospectively. In view of the averments and submissions made in the said affidavit in reply, it was contended that the reliefs asked for by the petitioners should not be granted and

the petitions be dismissed.

6) The petitioners have filed affidavit in rejoinder in reply to the affidavit in reply filed on behalf of the respondent No.2. It was stated that though the affidavit in reply was filed in June 2002, some documents, which were prior in point of time and which have the direct bearing on the issue involved in the matter were not placed on record and hence the same were placed by the petitioners, along with the affidavit in rejoinder. It was stated that the Government notification dated 19-7-2001 was issued to amend the recruitment rules of the cadre of Head Clerk and Superintendent along with corrigendum dated 30-7-2001. The petitioners have also produced recruitment rules of the cadre of Superintendent dated 6-11-1986, Government resolution dated 1-7-1989, consequent changes in the seniority lists in the cadre of Junior Clerk, Senior Clerk, Head Clerk, Head Clerk to the Superintendent etc. representation of the petitioners, Government instructions dated 18-8-2001 and the comparative chart showing anomaly. On the basis of these documents, it was contended that the petitioners should be given all the benefits, treating their services at par with the cadre of Head Clerk from their initial date of appointment, as was done in the case of Investigators, who were recruited along with the petitioners, though in the lower cadre. It was further submitted that the persons, who were recruited in the cadre of Investigators at the time when the petitioners were appointed as Statistical Assistants are already working in the cadre of Social Welfare Class-II and the petitioners are still working in the cadre of Superintendent, which is the feeder cadre of Social Welfare Officer, Class-II. It was, therefore, contended that the discrimination was writ large and therefore, the indulgence of this Court was prayed for. It was further stated that the contentions raised in the affidavit in reply are misconceived and hence the same should not be considered.

7) This matter was initially heard on 1-2-2003 and this Court has passed a detailed order directing the respondent No.2 to file an affidavit to the effect as to why the decision has not been taken in this regard, pursuant to the letter dated 18-8-2001. The respondent No.2 was further directed to take appropriate decision in the matter and while taking the said decision, the respondent No.2 was directed to consider the issues raised by the petitioner in the present petition, as well as various documentary evidence, which were filed before this Court along with the affidavit in rejoinder. It was also made very clear in the said order that if the

respondent No.2 could not take any decision because of certain constraints due to Government policy, in that case, the respondent No.1 was directed to take decision on the issue raised in the present petition. This Court has made it very clear that the decision must be taken by the respondent within a period of one month from the date of order and such decision was directed to be placed on the record of this Court.

8) Pursuant to the aforesaid direction, the Deputy Secretary, Social Justice and Empowerment Department issued a letter dated 19th February, 2003, stating that by virtue of Notification dated 19-7-2001, the post of Statistical Assistant was included in the feeder cadre of Head Clerk and hence their case prior to the date on which it was included in the feeder cadre cannot be considered for the purpose of promotion. The plain reading of this letter speaks that the respondent authorities are not inclined to accept the claim of the petitioners or to grant any benefit to them.

9) The matter was again heard today at length. Mr.Paresh Upadhyay, learned advocate appearing for the petitioner strongly urged that though this Court has specifically directed the respondent No.2 to file the affidavit in reply, no further affidavit is filed before this Court. It was further submitted that despite the fact that this Court has directed to consider all the submissions and contentions, which are urged in this petition, before taking any decision in the matter, the same were not taken into consideration and a decision was taken without discussing anything in this regard. He has further submitted that the petitioners' grievance was to be redressed by administrative action. However, the same was sought to be denied by contending that the post of Statistical Assistant was not included in the feeder cadre of the Head Clerk. In other words, consequential benefits claimed by the petitioners were denied to the petitioners and hence this Court should pass a specific mandatory order directing the respondent to grant consequential benefits to the petitioners right from the date, when they were appointed as Stastical Assistants.

11) Mr.M.A.Bukhari, learned Assistant Government Pleader appearing for respondent, on the other hand has relied on the affidavit in reply filed, as well as the Notification issued by the Government on 6th November, 1986, as well as the further Notification dated 19th July, 2001 and on that basis, he has submitted that the Government has taken the correct decision by not granting the said benefits to the petitioners as the Notification

issued cannot operate retrospectively. From the date of the notifications, the benefits are given to the petitioners and hence the petitioners are now not permitted to raise any grievance claiming the benefit from the date of joining department as Stastical Assistants.

12) After having heard the learned Advocates appearing for the respective parties and having given my anxious thoughts to the submissions made by them as well as the papers and documents produced by them, I am of the view that the Respondent Authorities are not justified in denying the alternative relief claimed by the petitioners in this petition. There is no dispute about the fact that the petitioners as Statistical Assistants and others as Investigators were appointed almost at the same point of time inthe office of the Respondent No.2. There is also no dispute about the fact that at the time of their appoitments they were not included in any cadre and hence there were no chances for promotion. However, for the purpose of regulating recruitment to the posts of office Superintendent and otehr equivalent posts, the Social Welfare Department, Government of Gujarat has issued Notification on 6th November, 1986, by virtue of which, the appointment to posts of Assistant Social Welfare Officer and other equivalent posts mentioned in Rule 1 of the Office Superintendent and its Equivalent Posts (Class-III) in the Directorate of Social Welfare Recruitment Rules, 1986, were to be made by promotion from amongst persons of proved merit and efficiency holding the posts of Head Clerk and other equivalent posts mentioned in Rule-2 of the said Rules. Thereafter, the said Rules of 1986 were amended by Notification dated 19-7-2001 issued by the Social Justice and Empowerment Department and in Rule-2, after the words "Van Supervisor" the words "Statistical Assistant" were inserted. Not only this, by an another Notification of even date, i.e. 19-7-2001 issued by the same Department, i.e. Social Justice and Empowerment Department, the Head Clerk and its Equivalent Posts (Class-III) in the Directorate of Social Welfare Recruitment Rules, 1986, were also amended and in Rule-2, in Sub-Rule (a), the words "Statistical Assistant" were deleted. The natural consequence of these amendements are that the Statistical Assistants and Head Clerks are placed in the same feeder cadre of Office Superintendent and otehr equivalent Posts, from 19th July, 2001 and prior thereto, i.e. from 6th November, 1986, the Statistical Assistants and Senior Clerks were placed in the same feeder cadre of Head Clerk. Consequent to these changes, the petitioners were initially placed in the cadre of Senior Clerk being

feeder cadre of Head Clerk and after the Notifications of 19th July, 2001, they were to be placed in the cadre of Head Clerks being feeder cadre of Office Superintendent and other equivalent posts.

13) After having examined the aforesaid relevant Rules and the factual profile of the matter, the question for Court's consideration now remains as to whether the peitioners could be treated either as Senior Clerks or Head Clerks from the date on which they were placed in the respective cadre as per the Notifications or from the date of their appointments as Stastical Assistants in the office of the Respondent No.2. Answer to this question is also not difficult. Even in absence of any rules, the Deputy Secretary, Social Welfare Department, Gandhinagar passed a Resolution on 1-7-1989, whereby the Investigators were placed in the cadre of Junior Clerks being feeder cadre of Senior Clerks and on the basis of said Resolution, the Director, Social Welfare Department, Gandhinagar issued Amendment Order on 11-7-1994 whereby the Investigators' names were included in the seniority list of Junior Clerks on the basis of their initial appointments as Investigators. This is clearly shown and exhibited by the petitioners in the papers and documents produced at pages 71 to 75 of the petition. If this be the position in the case of the Investigators, no different treatment should be given to the petitioners being Statistical Assistants, as it certainly amounts to discrimination, being violative of Articles 14 and 16 of the Constitution of India and this Court finds it just and proper to interfere in the matter. The decision taken by the Deputy Secretary, Social Justice and Empowerment Department, vide his letter dated 19th February, 2003, cannot be upheld on the envil of Articles 14 and 16 of the Constitution of India as it is not befitting for the Respondents to contend that the petitioners are entitled to the promotion and pay scale of higher posts from the date of respective Notifications and not from the date of their initial appointments as Statistical Assistants. I, therefore, allow the alternative prayer made in this petition as the petitioners were treated as Senior Clerks being the feeder cadre of Head Clerks by virtue of Notification dated 6th November, 1986, untill 19th July, 2001 and Investigators were treated as Junior Clerks being the feeder cadre of Senior Clerks, and direct the Respondent Authorities to assign seniority to the petitioners in the cadre of Senior Clerks from the date of their initial appointment and to treat the petitioners on the higher post carrying appropriate pay scale on the basis of the said seniority and on the basis of the date of promotion

of the juniors to the petitioners appointed in the equivalent cadre in the office of the second respondent and to grant all consequential benefits of fixations of pay, arrears of salary, deemed date of promotion in appropriate cadre etc., and modify the seniority list accordingly.

14) It is needless to state and clarify that though the Secretary, Social Welfare Department and Director, Social Welfare Department are impleaded as party Respondents, they are now redesginated and may be known as Secretary, Social Justice and Empower Department or Secretary, Tribal Development Department and Director of Scheduled Caste or Scheduled Tribes or Developing Castes, respectively. Whatever be their designation or whatever nomenclature be given to them, the directions given by the Court in this petition shall equally apply to them and they are directed to comply with these directions within three months from the date of receipt of certified copy of this judgement or the writ of this Court, whatever is earlier.

15) With these directions, the petition is accordingly disposed of. Rule made absolute to the above extent with no order as to costs.

(K.A.Puj, J.)
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